

SENATE BILL 3769
By McNally

AN ACT to amend Tennessee Code Annotated, Title 55, to
enact the "Tennessee Administrative License
Revocation Act of 2006".

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 55, Chapter 50, is amended by adding
the following as a new part 9:

§55-50-901. This act shall be known and may be cited as the "Tennessee
Administrative License Revocation Act of 2006".

§55-50-902. The general assembly finds and declares that enactment of this
part is necessary:

(1) To provide safety for all persons using the highways of this state by
quickly revoking the driving privilege of those persons who have shown
themselves to be safety hazards by driving with an excessive concentration of
alcohol in their bodies or who refuse to submit to a test or tests for the purpose of
determining the drug or alcohol content of such person's blood; and

(2) To guard against the potential for any erroneous deprivation of the
driving privilege by providing an opportunity for administrative review prior to the
effective date of revocation, and an opportunity for a full hearing as quickly as
possible after the revocation becomes effective.

§55-50-903. As used in this part unless the context clearly requires otherwise:

(1) "Certificate for Driving" means a certificate issued by the department
to an individual who does not satisfy the requirements of §55-50-321(c)(1)(C)(i)
or (c)(1)(C)(ii);

(2) "Department" means the Tennessee department of safety;

(3) "Driver license" means any license to operate a motor vehicle issued under Tennessee law;

(4) "Law enforcement officer" refers to any law enforcement officer who has satisfactorily completed a recruit training program approved by the Tennessee peace officer standards and training commission;

(5) "License" means any driver license or any other license or permit to operate a motor vehicle issued under, or granted by, Tennessee law including:

(A) Any temporary license or instruction permit;

(B) The privilege of any person to drive a motor vehicle whether or not the person holds a valid license; or

(C) Any nonresident's operating privilege as defined herein;

(6) "Nonresident's operating privilege" means the privilege conferred upon a nonresident by Tennessee law pertaining to the operation by that person of a motor vehicle, or the use of a vehicle owned by that person, in Tennessee;

(7) "Revocation" means the termination by formal action of the department of a person's license or privilege to operate a motor vehicle on the highways, which terminated license or privilege shall not be subject to renewal or restoration except that an application for a new license may be presented and acted upon by the department after the expiration of the applicable period of time prescribed in this part; and

(8) "State" means a state, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a province or territory of Canada.

§55-50-904.

(a) The department shall revoke the license or certificate for driving of any person upon its determination that the person drove or was in actual physical control of a motor vehicle while the alcohol concentration in the person's blood or breath was eight-hundredths of one percent (.08%) or more. For purposes of this act, alcohol concentration means either grams of alcohol per one hundred (100) milliliters of blood or grams of alcohol per two hundred ten (210) liters of breath.

(b) The department shall revoke the license or certificate for driving of any person upon its determination that the person refused a test to determine alcohol concentration in a person's blood as provided in §55-10-406.

(c) The department shall make an administrative review and a determination of these facts on the basis of the report of a law enforcement officer required in §55-50-905, and this determination shall be final unless a hearing is requested under §55-50-911.

(d) The determination of these facts by the department is independent of the determination of the same or similar facts in the adjudication of any criminal charges arising out of the same occurrence. The disposition of those criminal charges shall not affect any revocation under this part.

§55-50-905.

(a) A law enforcement officer who arrests any person for a violation of §55-10-401, shall, within five (5) working days, forward to the department a report of all information relevant to the enforcement action, including the sworn affidavit of complaint, the arrest report including information which adequately identifies the arrested person, a statement of the officer's grounds for belief that the person violated §55-10-401, a report of the results of or request for any chemical tests that were conducted or refusal to submit to a test, and a copy of the citation, driver

license, copy of the request for hearing form, receipt for temporary permit, and complaint filed with the court. A copy of the completed notice of revocation form, a copy of any completed temporary permit form and any driver license, or certificate for driving, taken into possession under this section shall be forwarded immediately to the department by the officer.

(b)

(1) The department shall supply the following forms:

- (1) A request for hearing form;
- (2) Receipt for temporary permit form;
- (3) A notice of revocation form; and
- (4) The temporary permit form.

(2) All agencies shall be required to use only forms supplied by the department of safety.

(c) The affidavit of complaint, implied consent form and the forms listed in section (b) shall be accepted as prima facie evidence in all administrative reviews and hearings authorized by this part.

§55-50-906.

(a) Upon receipt of the report of the law enforcement officer, the department shall make the determination described in §55-50-904.

(b) If a person fails to request a hearing, a notice of revocation shall clearly specify the reason and statutory grounds for the revocation, the effective date of the revocation, and any procedure to petition for judicial review.

§55-50-907.

(a) If the breathalyzer test results for a person who is being charged with a violation of §55-10-401 show an alcohol concentration of eight-hundredths of

one percent (.08%) or more, if a chemical blood-alcohol test is performed and submitted to the Tennessee bureau of investigation for testing, or if the person refuses a test to determine alcohol content, the officer, acting on behalf of the department, shall serve the notice of proposed revocation and request for hearing form personally on the arrested person. If a chemical blood-alcohol test is performed, the notice becomes effective upon receipt of results showing the blood-alcohol content was .08% or above. If the chemical test shows there was less than .08% of alcohol in the person's blood, the department shall immediately reinstate the license and return it to the driver.

(b) When the law enforcement officer serves the notice of proposed revocation, the officer shall take possession of any driver license or certificate for driving issued by the state which is held by the person. When, the officer takes possession of a valid driver license issued by this state, the officer, acting on behalf of the department, shall issue a temporary permit which is valid for up to one hundred (100) days after its date of issuance. The officer shall also serve a request for hearing form.

(c) A copy of the completed notice of proposed revocation form, a copy of any completed temporary permit form, and any driver license or certificate for driving taken into possession under this section shall be forwarded within five (5) working days to the department by the officer. The failure of the officer to transmit the sworn report required by this section within five (5) days shall not prevent or prohibit the department from accepting such report at a later time and utilizing it in the revocation of a driver license as provided in this part.

(d) The department shall provide forms for notice of proposed revocation and for temporary permits to law enforcement agencies.

(e) Any notice or citation completed by an officer shall include a document from the Tennessee bureau of investigation stating that the instrument is certified, tested regularly for accuracy and working properly.

(f) Only law enforcement officers who have satisfactorily completed a recruit training program approved by the Tennessee peace officers standards and training commission may act on behalf of the department by serving notice of proposed revocation, taking possession of a driver license or certificate for driving and issuing a temporary permit as authorized by this section.

§55-50-908.

(a) The license revocation shall become effective thirty (30) days after the person has received the notice of proposed revocation. The notice of revocation shall become effective upon the person refusing a chemical analysis test or when the results of a test indicating a violation of this part become available.

(b) The period of license revocation under this section shall be as follows:

(1) The period shall be three (3) months if the person's driving record shows no prior alcohol or drug-related enforcement contacts during the immediately preceding five (5) years.

(2) The period shall be one (1) year if the person's driving record shows one (1) or more prior alcohol or drug-related enforcement contacts during the immediately preceding five (5) years.

(3) For purposes of this section, "alcohol or drug-related enforcement contacts" include any revocation under this part, any suspension or revocation entered in this or any other state for a refusal to submit to chemical testing under an implied consent law, and any

conviction in this or any other state for a violation which involves driving a vehicle while having an unlawful alcohol concentration, or while under the influence of alcohol, drugs, or alcohol and drugs.

(4) Persons who have no prior record alcohol or drug related enforcement contacts during the immediately preceding ten (10) years and who submitted to a chemical test in accordance with the provisions of §55-10-406, after a minimum revocation period of thirty (30) days shall be eligible for a restricted driver license in the same manner as is provided in §55-10-403.

(5) Persons who have one (1) or more prior alcohol or drug-related enforcement contacts during the immediately preceding ten (10) years shall not be eligible for a restricted driver license or restricted certificate for driving during their period of revocation under this act.

(c) Where a license or certificate for driving is revoked under this section, and the person is also convicted on criminal charges arising out of the same occurrence for a violation of §55-10-401, or found to be in violation of §55-10-406, both the revocation under this section and the revocation under §55-10-403, and §55-10-406, shall be imposed, but the periods of revocation shall run concurrently, and the total period of revocation shall not exceed the longer of the two (2) revocation periods.

§55-50-909.

(a) The periods of revocation specified by §55-50-908, are intended to be minimum periods of revocation for the described conduct. No license or certificate for driving shall be restored under any circumstances and no restricted driver license shall be issued during the revocation period, except as provided in

§55-50-907(b); provided, however, if any criminal charges arising out of the same incident have had final determination rendered by a court, the court may order a restricted license or restricted certificate for driving under the provisions of §55-10-403.

(b) No driving privilege may be restored as a result of a revocation under this act until such person provides evidence of financial responsibility, pays a one hundred dollar (\$100.00) restoration fee and passes the driver license examination as a condition precedent to the restoration of such license or permit.

(c) Any person who has received a notice of proposed revocation under this part shall, prior to the return of any driver license or certificate for driving taken pursuant to §55-50-907, be required to pay to the department an administrative processing fee of twenty-five dollars (\$25.00).

(d) If a driver license or certificate for driving is revoked pursuant to this part, and at the time of the violation specified in §55-50-904(a) or (b), the person was driving the motor vehicle while such person's privilege to do so had been cancelled, suspended or revoked for any reason, the period of revocation imposed pursuant to this part shall be in addition to the period of cancellation, suspension or revocation in effect at the time of the violation specified in §55-50-904(a) or (b), and such person shall not be eligible for a restricted driver license or certificate for driving during both such periods.

§55-50-910.

(a) Upon receipt of the information provided by the law enforcement officer as required in §55-50-905(a), the department shall automatically conduct an administrative review and make a determination pursuant to §55-50-904, of this part.

(b) In such review, the department shall give consideration to all available information. If the department determines by a preponderance of the evidence that the person drove or was in actual physical control of a motor vehicle while such person had an alcoholic concentration of eight-hundredths of one percent (.08%) or more, or that the person refused the test, the department shall sustain the order of revocation. If the evidence does not support such determination, the department shall immediately rescind the order of revocation. The determination of the department upon administrative review is final unless a hearing is requested under §55-50-911.

(c) The department shall make a determination upon administrative review at least five (5) days prior to the effective date of the revocation order. If the department is unable to make a determination within the time limit specified, the department shall stay the revocation pending such determination. If the department rescinds the revocation, the department shall return the person's driver license or certificate for driving.

§55-50-911.

(a) Any person who has received a notice of proposed revocation from the officer may, within ten (10) days of receipt of notice, make a written request for a hearing. If the person's driver license or certificate for driving has not been previously surrendered, it must be surrendered at the time the request for hearing is made. A request for a hearing submitted within ten (10) days of the receipt of the notice of revocation from the officer will stay the license or certificate for driving revocation until all administrative appeals are exhausted under the uniform administrative procedures act, codified in title 4, chapter 5.

(b) The hearing shall be scheduled to be held as quickly as practicable.

The hearing shall be held at a place designated by the department as close as practicable to the place where the arrest occurred, unless the parties agree to a different location. The department shall provide a written notice of the time and place of the hearing to the party requesting the hearing at least ten (10) days prior to the scheduled hearing, unless the parties agree to waive this requirement.

(c) The presiding hearing officer shall be the commissioner or an authorized representative designated by the commissioner. The presiding hearing officer shall have authority to administer oaths and affirmations, to examine witnesses and take testimony, to receive relevant evidence, to issue subpoenas, take depositions, or cause depositions or interrogatories to be taken, to regulate the course and conduct of the hearing, and to make a final ruling on the issue.

(d) The sole issue at the hearing shall be whether by a preponderance of the evidence the person drove or was in actual physical control of a motor vehicle while having an alcohol concentration of eight-hundredths of one percent (.08%) or more, or the person refused a chemical analysis test. If the presiding hearing officer finds the affirmative of this issue, the revocation order shall be, sustained. If the presiding hearing officer finds the negative of the issue, the revocation order shall be rescinded.

(e) The hearing shall be recorded. The decision of the presiding hearing officer shall be rendered in writing, and a copy shall be provided to the person who requested the hearing.

(f) If the person who requested the hearing fails to appear without just cause, the right to a hearing shall be waived, and the department's earlier

determination shall be final.

(g) Witnesses under subpoena shall be entitled to the same fees as are now or may hereafter be provided for witnesses in civil actions in the circuit court and, unless otherwise provided by law or by action of the agency, the party requesting the subpoenas shall bear the cost of paying fees to the witnesses subpoenaed.

(h) The department shall reimburse any governmental agency expenses incurred while testifying in hearings authorized by this part, when the department subpoenas the governmental agency's representative. Funds for such payments shall be paid from the expendable receipts collected by the department under §55-12-129.

§55-50-912.

(a) Within thirty (30) days of the issuance of the final determination of the department following a hearing pursuant to §55-50-911, a person aggrieved by the determination shall have the right to file a petition in the chancery court in Davidson County or in the chancery court for the county where the arrest or offense occurred for judicial review. The filing of a petition for judicial review shall not stay the revocation order.

(b) The review shall be on the record without taking additional testimony. If the court finds that the department exceeded its constitutional or statutory authority, made an erroneous interpretation of the law, acted in an arbitrary and capricious manner, or made a determination which is unsupported by the evidence in the record, the court may reverse the department's determination.

§55-50-913. The Tennessee uniform administrative procedures act compiled in title 4, chapter 5, shall govern the administrative hearing and judicial review provided in this part.

§55-10-914. For the purpose of implementing the provisions of this part, the commissioner of safety is directed to apply for all applicable federal funding.

SECTION 2. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application and to that end, the provisions of this act are declared to be severable.

SECTION 3. For purpose of employing necessary staff, securing office space, preparing forms and other acts necessary to implement the provisions of this act, it shall take effect January 1, 2007, the public welfare requiring it. For all other purposes, including the administrative revocation of licenses, it shall take effect on January 1, 2008, the public welfare requiring it.